

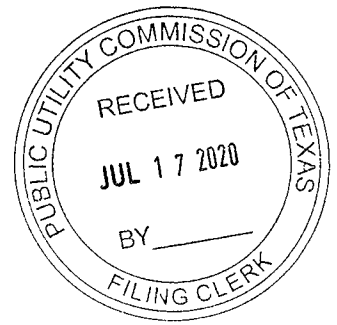


Control Number: 48769



Item Number: 54

Addendum StartPage: 0



DOCKET NO. 48769

**APPLICATION OF AQUA UTILITIES, §
INC., AQUA DEVELOPMENT, INC., §
AND AQUA TEXAS, INC. FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN BANDERA, BASTROP, §
BEXAR, BLANCO, BURNET, COMAL, §
GILLESPIE, HAYS, KENDALL, KERR, §
KIMBLE, LIVE OAK, LLANO, §
MEDINA, NUECES, TRAVIS, §
WILLIAMSON, AND WILSON §
COUNTIES §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**JOINT RESPONSE TO ORDER NO. 18 AND SECOND SUPPLEMENTAL MOTION TO
ADMIT EVIDENCE**

COME NOW the Staff of the Public Utility Commission of Texas (Staff), Aqua Utilities, Inc., Aqua Development, Inc., and Aqua Texas, Inc. (collectively, the Parties) jointly and file this Response to Order No. 18 and Second Supplemental Motion to Admit Evidence. In support thereof, the Parties would show the following:

I. BACKGROUND

On October 11, 2018, Aqua Utilities, Inc. (Aqua Utilities), Aqua Development, Inc. (Aqua Development), and Aqua Texas, Inc. (Aqua Texas) (collectively, Applicants) filed an application for approval of a sale, transfer, or merger under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Specifically, Aqua Utilities and Aqua Development seek to transfer facilities and certificate rights under water Certificate of Convenience and Necessity (CCN) Nos. 11157 and 12902 and sewer CCN Nos. 20453 and 20867 to Aqua Texas. The service areas to be transferred include approximately 38,400 acres and 16,336 current customers and are located in Bandera, Bastrop, Bexar, Blanco, Burnet, Comal, Gillespie, Hays, Kendall, Kerr, Kimble, Live Oak, Llano, Medina, Nueces, Travis, Williamson, and Wilson Counties. Applicants are all subsidiaries of Essential Utilities, Inc. fka Aqua America, Inc (Essential Utilities).

On May 12, 2020, the Parties jointly filed a Supplemental Motion to Admit Evidence and Proposed Notice of Approval. Order No. 18, issued July 8, 2020, directed the Parties to submit

data addressing financial assurance¹ and regionalization and consolidation² on or before July 20, 2020. Therefore, this pleading is timely filed.

II. RESPONSE TO ORDER NO. 18

As supported by the attached memorandum of Emily Sears of the Commission's Rate Regulation Division, Staff recommends finding that Aqua Texas has demonstrated the financial ability and stability necessary to provide continuous and adequate service to the area subject to the transaction, and therefore, should not be required to submit a bond or financial assurance. Staff also recommends finding that all of the service areas to be transferred to Aqua Texas are existing service areas already served by one of Aqua Texas's affiliates, and construction of a physically separate water or wastewater system is not required to provide service to the existing customers in these areas. Therefore, written requests to and responses from retail public utilities within a half mile of each service area were not required for this application.³ However, the record reflects that the surrounding retail public utilities within two miles of the service areas subject to the transaction received notice of the application,⁴ and none of those utilities intervened in this proceeding or opposed the application. Further, approval of the transfer will align Aqua Texas's service areas under water CCN No. 13254 and sewer CCN No. 21116 with almost all of the areas in its Southwest rate region under common operations management, which promotes regionalization. For all of these reasons, regionalization or consolidation with any retail public utility other than Aqua Texas, is not economically or otherwise feasible.

III. SECOND SUPPLEMENTAL MOTION TO ADMIT EVIDENCE

The Parties request admission of the attached memorandum of Emily Sears into the record of this proceeding as evidence.

¹ TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f) and 24.239(h).

² TWC § 13.241(d); 16 TAC § 24.227(b).

³ 16 TAC § 24.227(b).

⁴ Affidavit of Notice to Current Customers, Neighboring Utilities and Affected Parties at 1-10 (Apr. 9, 2019).

IV. CONCLUSION

The Parties respectfully request the entry of an order admitting the supplemental evidence offered herein. Further, the Parties request an order finally approving the application consistent with the Parties' previously filed proposed order, but with inclusion of additional findings consistent with Staff's supplemental recommendation offered herein.

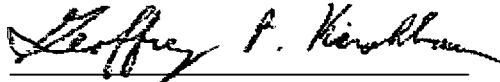
Dated: July 17, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

/s/ Eleanor D'Ambrosio
Eleanor D'Ambrosio
State Bar No. 24097559
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7021
(512) 936-7268 (facsimile)
Eleanor.Dambrosio@puc.texas.gov



Geoffrey P. Kirshbaum

State Bar No. 24029665

TERRILL & WALDROP

810 West 10th Street

Austin, Texas 78701

Tel: (512) 474-9100

Fax: (512) 474-9888

gkirshbaum@terrillwaldrop.com

ATTORNEY FOR AQUA UTILITIES, INC.,

AQUA DEVELOPMENT, INC., AND AQUA

TEXAS, INC.

DOCKET NO. 48769
CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on July 17, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Eleanor D'Ambrosio
Eleanor D'Ambrosio

PUC Interoffice Memorandum

To: Eleanor D'Ambrosio, Managing Attorney
Legal Division

From: Emily Sears, Financial Analyst
Rate Regulation Division

Date: July 16, 2020

Subject: **Docket 48769**, *Application of Aqua Utilities, Inc., Aqua Development, Inc., and Aqua Texas, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bandera, Bastrop, Bexar, Blanco, Burnet, Comal, Gillespie, Hays, Kendall, Kerr, Kimble, Live Oak, Llano, Medina, Nueces, Travis, Williamson, and Wilson Counties*

This memo addresses Order No. 18 requesting data that addresses the factors of Texas Water Code (TWC) §§ 13.246(d), 13.301(c); 16 Texas Administrative Code (TAC) §§ 24.227(f), and 24.239(h). The ALJ further requested data that addresses the factors of TWC § 13.241(d) and 16 TAC § 24.227(b).

Aqua Texas, Inc., (Purchaser) Aqua Utilities, Inc. and Aqua Development, Inc. (collectively Applicants) are all subsidiaries of Essential Utilities, Inc. fka Aqua America, Inc (Essential Utilities). This application seeks to consolidate Aqua Utilities and Aqua Development into one subsidiary, Aqua Texas. This will reduce the number of certificates of convenience and necessity (CCNs) that the subsidiaries of Essential Utilities hold as well as the number of subsidiaries that are operating water and sewer systems in Texas.

1) TWC § 13.246(d) (TWC § 13.301(c), 16 TAC § 24.227(f), and § 24.239(h)) allows the Commission to require an applicant to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided.

16 TAC § 24.11(c) states that financial assurance must be demonstrated by compliance with subsection (d) or (e) of that section. Staff's final recommendation demonstrated that the Purchaser met the requirements of 16 TAC § 24.11(e).¹ Therefore, Staff does not recommend that the Applicants provide a bond or other financial assurance.

2) TWC § 13.241(d) (16 TAC § 24.227(h)) requires an applicant that is requesting to amend or add an area that would require the construction of a physically separate water or sewer system to demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Staff's final recommendation demonstrated that no new construction was necessary to serve the requested area as a result of the transaction² Also, as stated above, this application seeks to consolidate the Applicants into one subsidiary of Essential Utilities, Aqua Texas, Inc. This will reduce the number of CCNs that the subsidiaries of Essential Utilities hold as well as the number of subsidiaries that are operating water and sewer systems in Texas. Therefore, Staff did not require that the Applicant demonstrate that regionalization or consolidation with another retail

¹ Commission Staff's Final Recommendation at 5-6 (Jun. 4, 2019).

² *Id.* at 6.

public utility is not economically feasible.